



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

WINDING UP CAUSE NO. 01 OF 2011

IN THE MATTER OF THE COMPANIES ACT CHAPTER 486

AND

IN THE MATTER OF INTESTATE PETROLEUM COMPANY LIMITED

AFRICA OIL TURKANA (K) LIMITED.....1ST PETITIONER

AFRICAN OIL CORPORATION2ND PETITIONER

AFRICAN OIL KENYA BV 3RD PETITIONER

AND

0903658 BC LTDSUPPORTING CREDITOR

VERSUS

INTESTATE PETROLEUM COMPANY LIMITEDRESPONDENT

AND

MAOSA KENGARA MONENA1ST CONTRIBUTOR/OBJECTOR

ERICK PATRICK ADERO OBAT2ND CONTRIBUTOR/OBJECTOR

MOSES ONYANGO OMBOYO3RD CONTRIBUTOR/OBJECTOR

LUCY MUTHONI GATIMO4TH CONTRIBUTOR/OBJECTOR

EDWARD KINGS ONYANCHA

MAINA.....5TH CONTRIBUTOR/OBJECTOR

RULING

The Applicant, **Edward Kings Onyancha Maina**, is the 5th Contributor in this winding up proceedings. He is aggrieved by the decision of the Taxing Officer of the court who taxed the bill of costs payable to ALL contributors at Kshs 115,925/=. This amount was deposited in court by the Respondent. The 5th Contributor (applicant) was required by the court to file an application to establish his entitlement to the said amount. The Applicant did not comply with this direction of the court. Despite of this failure to comply with the directions of the court, the Applicant somehow obtained a warrant of attachment of the properties of the Respondent. To forestall embarrassment, the Respondent paid the amount including the auctioneers fees which total amounted to Kshs 278,823/=. One would have thought that would be the end of the matter. It was not to be.

The Respondent followed up the payment with an application before court. It was apparent from the pleadings filed by the Applicant that he desired the question of instruction fees payable on the contributors' costs to be based on the value of the indicated crude oil reserve and not the nature of the suit which had been brought before the court. The Taxing officer of this court disagreed with this proposition by the Applicant hence the taxation of the contributors' costs at Kshs 115,925/=. The Applicant made various applications before this court (Chemitei, J). All applications were intended to secure from the court a decision in relationship to the basis upon which the instruction fees should be assessed. The court agreed with the Taxing Officer's decision in one of the rulings delivered on 18th November 2019, the Learned Judge had this to say:

“ 7. The question of costs which was awarded to the Applicant is no longer open for discussion as the Applicant seemed to invite me to. If the Respondents have deposited the sum in court what better way does the Applicant expect the court to assist. He should collect the sum from the relevant court section barring any other requirements, if any, imposed on the said sum.

8. In summary, litigation must come to an end. The Applicant should appeal any decisions of this court if aggrieved. This court cannot hold anybody in contempt as the Applicants want without any fault.”

In compliance with this ruling, the Applicant indeed filed a notice of appeal indicating his intention to file an appeal to the Court of Appeal against the said decision of 18th November 2019. It is not clear from the record if the Applicant pursued the appeal to the Court of Appeal. Suffice for this court to state that the Applicant in yet another application before this court pursued the issue of costs. It was instructive that the Applicant filed the application when another Judge (Bwonwong'a J) had assumed jurisdiction in this court after the transfer of Chemitei J. It was apparent that the Applicant wrongly presumed that since Chemitei J no longer exercised jurisdiction in this court, then another Judge would consider his application on the same issue which a ruling had already been rendered. This what the Judge said when striking out the Applicant's application:

“The fact that Chemitei J was transferred from Kitale to Nakuru did not affect the continued validity of the order he issued; since an order once issued by a court of law acquires a life of its own and remains in force throughout the life of the suit. Furthermore, it binds the parties to the suit throughout its life time”.

This ruling was delivered on 30th March 2021.


Undaunted, the Applicant, again, filed another application on 22nd June 2021 before this present court. Again the Applicant is essentially seeking the same orders which were denied earlier by this court. To top the ante, the Applicant has sought the setting aside of all the adverse orders of the court made against him. Interestingly, this court would have thought that once the Applicant took the option of lodging an appeal against the adverse decisions made against him, he would have pursued that option to the very end. This court formed the view that the application before the court is an application for review in disguise. However, the Applicant has not placed any discernable grounds which would enable this court exercise its discretion in his favour.

This court agrees with its predecessors (Chemitei J and Bwonwong'a J) that precious judicial time has been wasted by the Applicant, again, and again pursuing the same issue before the same court which has ruled against him with finality in respect of the issue of costs. That issue, as has been repeated, again and again by this court has been resolved and the only remedy available to the Applicant is to file an appeal to the Court of Appeal. The Applicant has been told severally that the subsequent applications that he has filed before this court cannot be allowed before the issues he is raising, in whatever form or disguise, are *res judicata*. This court is *functus officio*. It has rendered its ruling with finality. The issue of costs cannot be revised by this court. The application therefore lacks merit and is hereby dismissed with costs. It is so ordered.

DATED AT KITALE THIS 21ST DAY OF DECEMBER 2021.

L. KIMARU

JUDGE

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